

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BETTY ANNE WATERS, as
Administratrix of the Estate of
KENNETH WATERS,

Plaintiff,

v.

TOWN OF AYER, NANCY TAYLOR-
HARRIS, in her individual capacity, ARTHUR
BOISSEAU, in his individual capacity,
BUDDY DECOT, in his individual capacity,
WILLIAM ADAMSON, in his individual
capacity, PHILIP L. CONNORS, in his
individual capacity, and JOHN DOE and JANE
DOES 1–16, in their individual capacities,

Defendants.

Case No. 04 10521 (GAO) (JGD)

**PLAINTIFF BETTY ANNE WATERS’
ASSENTED-TO MOTION TO
EXTEND EXPERT DISCLOSURE
DEADLINE**

Plaintiff Betty Anne Waters hereby moves pursuant to Rule 16 to amend the scheduling order to grant her a one-month extension on the current July 23, 2007 deadline for expert disclosures in light of newly discovered fingerprint evidence. The undersigned counsel conferred with opposing counsel, who does not oppose this motion subject to the proviso that the extension be applied to all remaining deadlines. Plaintiff’s counsel does not object to this counterproposal.

There is good cause for this application. On July 10, 2007, plaintiff and her undersigned counsel conducted a search of the personal storage unity of former State Police fingerprint examiner John Baliunas (learned of in his deposition, as we informed the Court at a prior conference) and discovered his original file in the Brow murder investigation. The file contains

crime scene evidence and examination notes that have never been disclosed to plaintiff despite her repeated requests to the Ayer defendants, the State Police, and the DA's Office, including original latent prints lifted from the scene of the murder, a copy of the victim's print card, numerous crime scene photographs, and handwritten notes apparently indicating that a number of individuals' print cards, including that of Mr. Waters, had been compared to and excluded from the crime scene prints. In addition, the file contains more legible copies of documents recently disclosed by the State Police, such as Mr. Baliunas's original crime scene report and a second handwritten set of notes listing individuals whose prints were compared to the crime scene prints. After making a copy of the complete file for plaintiff, Mr. Baliunas sent the original file directly to plaintiff's fingerprint expert. Plaintiff's counsel is now in the process of sending an additional copy of the file to defendants.¹

Plaintiff's fingerprint expert and police practices expert will need additional time to review and digest the new and highly relevant evidence contained in the file and adequately incorporate the new material into their reports. Plaintiff is mindful of the fact that the Court has already granted one extension on the expert disclosure deadline and seeks to move the case forward. However, the discovery of this evidence – original evidence from the investigation that had been presumed lost by all investigating agencies – is highly significant and critical to the reports of plaintiff's fingerprint and police practices experts.

Thus, given this new information and defendants' counterproposal that all expert reports

¹ Counsel for both the Middlesex County District Attorney's Office and the Massachusetts State Police have been notified of the discovery and all parties are working to reach a mutually acceptable agreement as to where the original file shall be sent to preserve the chain of custody, and to ensure the availability of the contents of the file for potential use at this trial.

be filed together, plaintiff respectfully requests that the Court allow a one-month extension on the disclosure of plaintiff's expert reports (from July 23, 2007 to August 23, 2007) and extending all remaining deadlines accordingly.

Dated: July 12, 2007
New York, NY

Respectfully submitted,

/s/ Deborah L. Cornwall
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Attorneys for Plaintiff Betty Anne Waters

PROOF OF SERVICE

I, Emily Gordon, being over eighteen years of age, hereby certify pursuant to the laws of the Commonwealth of Massachusetts that I served the following persons copies of this motion by mail and electronic filing on this 12th day of July, 2007.

Joseph L. Tehan, Jr.
Gregg J. Corbo
Jeffrey T. Blake
Kopelman & Paige, PC
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/s/ Emily Gordon
Emily Gordon